

ordained, and established, by the Advice of the Lords Spiritual and Temporal, and at the Prayer of the Commons in the said Parliament assembled, and by Authority of the same, that if any such Defendant or Tenant, Defendants or Tenants, or any other that shall be bound by the said Judgment, sue, afore Execution had, any Writ of Error to reverse any such Judgment, in delaying of Execution, (3) that then if the same Judgment be affirmed good in the said Writ of Error, and not erroneous, or that the said Writ of Error be discontinued in the default of the party, or that any person or persons that sueth Writ or Writs of Error, be non-sued in the same, that then the said person or persons, against whom the said Writ of Error is sued, shall recover his Costs and Damage for his Delay and wrongful Vexation in the same, by Discretion of the Justice afore whom the said Writ of Error is sued.

1 Salk. 205. Mod. Cases in Law, 314. Dyer, 77. Cro. El. 588, 659. Cro. Car. 145. 19 H. 7, c. 20. Co. pla. f. 2, 24, 162, 292.

**Scope of statute.**—The word “justice” at the end of the Act means the Court of error, *Pearson v. Iles*, Doug. 561, n. 5; *Salt v. Richards*, 7 East, 111, where a writ of error being *non prossed* for not transcribing the record in the K. B., the defendant in error was refused his costs, the Court observing that the Court “afore whom the writ of error is sued” could not mean the Court to whom error is imputed, but either the Court of Chancery out of which the writ is sued, or the Exchequer Chamber, which was the appellate tribunal, and that there is no Court before whom the writ is sued without the transcript being certified to them; and in *Beale v. Thompson*, 2 M. & S. 249, where the judgment was affirmed in the House of Lords, and the record remitted without awarding the costs in Parliament, it was held that these costs could not be allowed in the K. B. But if the plaintiff apply for leave to *non-pros.* his own writ, it will not be given him except on payment of costs, *Wilkinson v. Malin*, 1 Cr. & M. 240.

A writ of error sued *after execution*, not being in delay of execution, is not within the Statute, *Eardley v. Turnock*, Cro. Jac. 636; so it has been held that where the plaintiff below recovers judgment by default, and the defendant below, after payment of the debt and costs, sues out a writ of error on which the former judgment is affirmed, the plaintiff below is not entitled to his costs in error, under this Statute, as he has not been delayed in the execution of his judgment, *Sutherland v. Wills*, 5 Exch. 980; and damages and costs will be reduced if partial execution be had, *Earl of Pembroke v. Bostock*, Cro. Car. 173. The writ is held to be sued out “afore execution,” if an execution has issued before the writ but been rendered ineffectual by proceedings adverse to the plaintiff below, *Newlands v. Holmes*, 4 Q. B. 858. And though no damages or costs were recoverable in the action, yet they are given in error for delay of execution, costs being allowable in every case where a writ of error is brought before execution